

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

July 18, 2017

7:00 p.m. Town Hall

Present: Carol Anne Jordan, Chair  
Josef Chalat  
Peter Curry  
James Huebener  
Jonathan Sahrbeck  
Henry Steinberg  
Victoria Volent

Also present was Maureen O'Meara, Town Planner and John Wall, Town Attorney.

Ms. Jordan called the meeting to order and asked for approval of the minutes of the June 20, 2017 meeting. Mr. Sahrbeck, Ms. Jordan and Mr. Curry each had amendments to the minutes. The amended minutes were then approved , 6-1 (one abstain).

OLD BUSINESS

**517 Ocean House Rd LLC v. Town of Cape Elizabeth remand** - The Planning Board will discuss items remanded by the court in the above cited litigation.

Attorney Wall said the items the court has remanded are laid out in the memo. He said the court has expressly authorized the Board to take additional evidence in order to resolve the issues. It has also expressly authorized the Board to add additional conditions in order to resolve the factual issues. The Board needs to see if there is something specific in the record to support their findings.

Ms. Jordan then opened the public comment period.

Peggy McGehee of Perkins Thompson spoke on behalf of 517 Ocean House Rd LLC. She said she had sent a letter to the Board. She said this is the second remand. These items do not meet the standards. On two of the standards, the court finds no evidence that it meets the standards. There are no lights in the back parking lot for safety. The floodlights are not shielded from the night sky. There is no evidence that there are plantings between the sidewalk and the parking lot. There is no evidence on the record. There needs to be additional evidence, not a condition of approval. The Town Planner is not authorized to make an administrative decision. The applicant has to come forward with a new site plan.

No one else came forward to speak, so the public comment period was closed.

Mr. Sahrbeck said we have spent a lot of time reviewing this again. The back parking lot for this Summer Oven Restaurant was not a public parking area, it was only for the landscape business. Being at the site walk, we asked the applicant, who said that the landscape business operates from dawn to dusk only. We saw no necessity to require lighting there.

Regarding the light fixtures, what he recalls is that all the light fixtures were pointing down. There was a discussion of what the light fixtures would be, and there was nothing that would warrant a photometric study, or that they were going to create any sort of unnecessary lighting of the night sky.

As far as the plantings, he remembers a long discussion about the plantings. He remembers a long discussion about the softening of the view, and he does not see any necessity to reopen that issue. He said he could make findings on all the issues, based on the review of all the materials and the site walk they did.

Mr. Steinberg said he believes that there is no requirement to totally obscure the view. The requirement is to soften the view. They have a landscape business, with lots of plant materials. From the site walk he felt it all blended in automatically. The lighting was all pointing downward. In order to be disrupting the night sky, it would need to be a high intensity light. These are not high intensity lights.

Mr. Curry said it was clear that the back parking lot was for employee parking during normal business hours. He has a distinct memory of this from the workshops and the site walk. He addressed the lighting by saying it is a technical point that these fixtures do not need to be shielded from above to protect the night sky. The landscaping issue is a technical point, because this is a landscaping business and this whole project is a vast improvement over what is here now. They are removing pavement and planting grass. He is hoping to be finished with this lawsuit which is costing the Town a lot of time and money over microscopic points.

Ms. Jordan agrees that we are spending way too much time on this. Our workshops, our site walk and our meetings gave us the information. We talked a lot about the lighting at the site walk, and the fact that the existing lighting on the buildings would not be changed. They also talked about how they would gate off the parking lot so there was no way for the public to access the back property after hours. She was very satisfied with the information she received, and would like to close this and move on to something else.

Ms. Volent spoke about the lighting. She said there has been a finding that pedestrians, motorists and adjacent buildings are adequately shielded. Somehow the night sky is not shielded. There would need to be a spotlight

pointed directly upwards for that to happen. It does not make sense to her. We all saw that the lights were all standard fixtures and no additional lighting was to be added. That is why we did not order a photometric study. She wants it on the record that she disagrees with the judge's finding. We did look at this. It was fixtures on buildings, fixtures that were not even going to go more than .5 candle foot, that is why we did not have a photometric study. It is like porch lamps in the middle of a site. We all saw this and discussed it at the site walk.

Mr. Sahrbeck noted that nobody from Rudy's was at the site walk, even though it was open to the public. He also said that there was a large grassy area between the parking lot and the sidewalk. This was the area where the plantings were to be, and they all felt it was adequate for screening.

Mr. Curry asked Mr. Wall if there was a need to reopen the entire application for further evidence, because the Board feels there is adequate evidence already from the workshops and the site walk which were not recorded.

Mr. Wall said there is no requirement to take additional evidence if you feel there is sufficient evidence on the record. He said the court wants very specific findings from the Board and the specific facts the Board used to make those findings.

Ms. Jordan noted Pat Carroll was at the site walk as an interested party. He worked on the Rudy's project so she assumes he was there to represent 517 Ocean House LLC. She also said the findings of the July 19, 2016 meeting laid out all the meetings that were used as the basis for their decisions.

Mr. Wall said the court still has asked for more specific findings about the three issues in question. They want more specificity than they have to date.

Ms. Volent noted that the landscaping business only occurs during daylight hours. We were told that this business would be during daylight hours and that is why there is no lighting back there. It is parking for the employees of the landscaping business. They are not working in the dark. We heard that on the site walk. We asked this on the site walk. And Pat Carroll was not there for all of the site walk, and he did not identify himself as a representative of Rudy's.

Mr. Curry asked Ms. McGehee what her client is trying to achieve other than prolonging this thing and spending a lot of his money and ours.

Ms. McGehee said it is because Cape Elizabeth has such demanding standards and the Planning Board should apply the same standards to everyone.

Mr. Curry asked again what her client wants. More shrubs? How many?

Ms. McGehee said they want a plan submitted that is held to the same standards as her client.

Mr. Sahrbeck suggested adding language to the findings of fact for the July 2016 meeting.

After a discussion, the Board decided to leave the drafting of the findings of fact to Ms. O'Meara and Mr. Wall. They are citing the information they discovered at the site walk, and the workshops.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted, and the facts presented, the Superior Court remand in the order dated April 27, 2017 in 571 Ocean House Rd LLC v. Town of Cape Elizabeth be tabled to the regular August 15, 2017 meeting of the Planning Board.

Mr. Huebener seconded the motion and it passed, 7-0.

Ms. Jordan opened the public comment on items not on the agenda. No one came to speak, so the comment period was closed.

The Board voted 7-0 to adjourn at 7:45 p.m.

Respectfully submitted,

Hiroimi Dolliver  
Minutes Secretary